THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.7648 of 2005

Date: 8th November, 2006

Between :-

Kilari Kondaiah .. Petitioner

And

The District Collector (Panchayat wing),
Ongole, Prakasam District and 3 others ..
Respondents

THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.7648 of 2005

ORDER:-

1. Heard the Counsel.

2. W.V.M.P.No.2363 of 2005 is filed by the 1st and 2nd respondents in the Writ Petition to vacate the interim orders granted by this Court in W.P.M.P.10159/2005 dated 11-4-2005. At the request of the Counsel representing the parties, the Writ Petition itself is being disposed of finally.

3. The Writ Petition is filed for a Writ of Mandamus declaring the impugned proceedings ROC.No.1307/04 (Pts) A1, dated 9-8-2004 issued by the 2nd respondent against the petitioner, as illegal, arbitrary, without jurisdiction and against the principles of natural justice, contrary to the provisions of the A.P.Panchayat Raj Act 1994 and contrary to Rule 42(1) of G.O.Ms.No.30 of Panchayat Raj, Rural Development and Relief, dated 20-1-95, consequentially to set aside the same and to pass such other suitable orders.

4. It is stated that the petitioner was elected as Sarpanch of Pentrala Gram Panchayat, Linga Samudram Mandal, Prakasam District in the year 2002 and he has been discharging his duties since assumption to his office

without any complaint from any quarters so far. It is also stated that during the course of his tenure, the petitioner undertook several developmental as well as the welfare activities under the Gram Panchayat. It is also further stated that the 2nd respondent issued impugned show cause notice in ROC.No.1307/2004, Pts-A1 dated 9-8-2004 issued under Rule 42(1) issued in G.O.Ms.No.30 of PR, dated 20-1-1995, calling upon the petitioner to show-cause why his cheque powers shall not be withdrawn. It is stated that the said show cause notice was issued placing reliance on the alleged letter No.88/A2/2004, dated 16-7-2004 and 3-8-2004 of the Divisional Panchayat Officer, Kandukuru, Prakasam District and on a petition alleged to have been filed by one Darla Bhaktavatsalam, who is a ward member of Gram Panchayat and others. It is also stated that the 2nd respondent further withdrawn his Cheque powers in the same show cause notice and the powers were transferred to Extension Officer (PR & RD) Linga Samudram by authorizing to operate on the General/SGRY/EFC funds of Gram Panchayat. It was further stated that the 2nd respondent placed reliance on the above said petition and a letter, but the same were not furnished to the petitioner so as to enable him to submit his explanation in a suitable

and an effective manner despite his specific request for supplying the copies of the same. It is also stated that however the petitioner submitted his explanation before the 2nd respondent on 25-8-2004 with the material available to him. It is also stated that the 2nd respondent neither supplied any enquiry report nor any alleged petitions said to have been made against the petitioner so far and the 2nd respondent did not choose to pass any orders so far. It is further stated by the petitioner that the said show cause notice discloses that the 2nd respondent has framed two charges which are baseless, motivated with a malafide intention at the instigation of the petitioner's political rivals, who prevailed upon the respondents to see that the petitioner restrained from discharging his functions in the post of Sarpanch in a smooth manner. It is also further stated that the 1st respondent issued a show cause notice ROC.No.1307/2004 (Pts) A1, dated 10-12-2004 issued under Section 249(6) of the A.P.Panchayat Raj Act 1994 proposing the petitioner to place under suspension for a period of three months and alleged for his explanation and accordingly, the petitioner submitted his explanation dated 2-2-2005. It is also stated that the first respondent has issued the said show cause notice of suspension by

placing reliance on the impugned show cause notice of withdrawal of the Cheque powers issued by the 2nd respondent and alleged enquiry reports of Divisional Panchayat Officer, Kandukur. It is also stated that without supplying the material on which the proposed action to be taken against the petitioner, the respondents cannot proceed with issuing the proceedings in the above manner which are patently illegal. It is further stated that the respondents did not choose to follow the provisions of the principles of natural justice and the action of the respondents is highly illegal, arbitrary, motivated with malafide intention at the inst9igation of the petitioner's political rivals and without jurisdiction, violaltive of principles of natural justice and contrary to the provisions of A.P.Panchayat Raj Act 1994.it is also further stated that the respondents are bent upon to see that all the Sarpanches in the entire Mandal are obstructed from discharging their functions at the behest of the local ruling party MLA and to accommodate the interest of the persons of their choice and the said course the respondents have been issuing show cause notices enmass to all the Sarpanches who belong to main opposite party in the State. It is also further stated that aggrieved by the action of the 2nd respondent in not passing any final orders in pursuance of the impugned

show cause notice, the writ petitioner filed W.P.No.22507/2004 before this Court but however due to inadvertence of lack of the legal knowledge, the petitioner had not questioned the jurisdiction of the 2nd respondent in issuing the impugned show cause notice and this Court was pleased to dispose of the same by an order dated 7-12-2004 directing the 2nd respondent to pass appropriate orders within one week, failing which the impugned order dated 9-8-2004 stands automatically suspended but despite the orders of this Court, the 2nd respondent did not choose to pass any orders so far. It is also stated that under those circumstances, the petitioner filed W.P.No.25062/2004 seeking a direction to the 2nd respondent to restore the Cheque powers in view of the orders, dated 7-12-2004 passed by this Court, but however, this Court was pleased to dismiss the above Writ Petition by order dated 31-12-2004 giving liberty to the petitioner to initiate appropriate proceedings. It is further stated that as such the petitioner filed C.C.No.61/2005 before this Court against the 2nd respondent under his personal capacity for wilfully disobeying the orders dated 7-12-2004 in W.P.No.22507/2004 but however the petitioner withdrew

the above C.C.No.61/2005. It is also further stated that the 2nd respondent had issued the impugned show cause notice by invoking the powers under Rule 42(1) of the Rules issued in G.O.Ms.No.30, Panchayat Raj & Rural Development & Relief Department, dated 20-1-1985 and the said Rule 42(1) reads as hereunder:-

> *"The District Panchayat Officer concerned may, for sufficient reasons to be recorded in writing, prohibit by an order any executive authority from drawing the moneys of Gram Panchayat for such period as may be specified in such order"*
> *Provided that no such order shall be passed unless opportunity of making representation has been given to the executive authority concerned"*
> *Provided further that the District Panchayat Officer may issue an interim direction to the executive authority not to draw the moneys of the Gram Panchayat pending the exercise of this power under this Sub-Rule."*

It is also stated that as the 2nd respondent can initiate the proceedings, withdrawing the cheque powers in respect of executive authority only and Section 2 (12) of the A.P. Panchayat Raj Act, 1994, defines *Executive Authority* as hereunder:-

> *i) In the case of a Gram Panchayat or a group of Gram Panchayats having an Executive Officer, the Executive Officer and if there is no Executive Officer in-charge,*

the Sarpanch of the Gram Panchayat.

ii) In the case of any other Gram Panchayat, the Sarpanch thereof".

It is further stated that a plain reading of the above provisions clearly establishes the fact that whenever there is an executive authority existing in a Gram Panchayat, the 2nd respondent cannot proceed against the Sarpanch proposing to prohibit to operate on the funds of the Gram Panchayat . It is also further stated that in the absence of executive authority only, the District Panchayat Officer will be at liberty to initiate such proceedings against a Sarpanch and as such the impugned show cause notice issued by the 2nd respondent is void *ab initio* and does not stand to legal scrutiny. It is also stated that the 2nd respondent has no jurisdiction to issue the impugned notice against the petitioner and the 2nd respondent has no powers to prohibit the petitioner from operating on the funds of the Gram Panchayat.

5. In the counter affidavit filed by respondent No.2, it was stated that the show cause notice Roc.No.1307/2004 (Pts) dt.9-8-2004 issued to the petitioner is valid as per rules issued in G.O.Ms.No.30, P.R. dated 20-1-1995 and as per law. It is stated that as per sub-Section (1) of Section 268 of A.P. Panchayat Raj Act 1994 Government

have power to make rules generally to carry out all or any of the purposes of this Act. It is also stated that as per the above provisions of the Act, Government have issued rules under G.O.Ms.No.30 P.R., dt.20-1-1995. It is also further stated that as per the Government orders, the District Panchayat Officer may issue an interim measure to the Executive Authority not to draw moneys of the Gram Panchayat pending the exercise of this power for committing irregularlities by the Sarpanch. It is also stated that the contention of the petitioner that the notice issued by the District Panchayat Officer, Ongole is contrary to the provisions of Section 2(12) of the A.P. Panchayat Raj Act 1994 and Rules 42(1) of the Rules issued in G.O.Ms.No.30, dt.20-1-1995 is not tenable. Further specific stand was taken that it is a fact to the petitioner was elected as Sarpanch of Pentrala Gram Panchayat in the year 2002, but the villagers have put a petition to the District Panchayat Officer, Ongole stating that the petitioner has committed several irregularities in the administration of the Gram Panchayat. Further specific stand was taken in para 4 of the counter affidavit that the Extension Officer (PR and RD) Lingasamudram had conducted open enquiry on 7-7-2004 at Elementary School, Pentrala with prior notice to the Sarpanch and the petitioners, and the Sarpanch (the petitioner) and the

Panchayat Secretary of the Gram Panchayat and 6 Ward Members attended to the enquiry on 7-7-2004. It is also stated that the Extension Officer (PR and RD) Lingasamudram has enquired the contents of the petition with reference to the Gram Panchayat records before the members of the Gram Panchayat, Sarpanch and Secretary of the Gram Panchayat. It is also stated that the Extension Officer (PR and RD) Lingasamudram had submitted a detailed report to the District Panchayat Officer, Kandukur, in turn the District Panchayat Officer, Kandukur submitted his report to the District Panchayat Officer, Ongole vide his Lr.No.88/A2/2004, dt.16-7-2004. It is further stated that after examining the report furnished by the District Panchayat Officer, Kandukur and material papers available, the District Panchayat Officer, Ongole issued a show cause notice in Rc.No.1307/2004 (Pts) dt.9-8-2004 to the Sarpanch, Pentrala Gram Panchayat with a precaution measures the District Panchayat Officer, Ongole has prohibited the petitioner from operating the funds of the Gram Panchayat General/SGRY/EFC and authorized the Extension Officer (PR and RD) Lingasamudram to draw the funds of the Gram Panchayat. It is stated that the petitioner had committed serious irregularities in the administration of the Gram

Panchayat. It is also stated that the contention of the petitioner that the said show cause notice disclose that the 2nd respondent has framed two charges which are baseless, motivated with a malafide intention is not tenable. It is further stated that the show cause notice issued by the District Panchayat Officer, Ongole in ROC.No.1307/2004 (Pts) A1, dt.9-8-2004 to the petitioner is valid as per Law and as per provisions of A.P. Panchayat Raj Act 1994 and basing on the report given by District Panchayat Officer, Kandukur dt.16-7-2004 and 3-8-2004. It was further specified in para 5 of the counter affidavit while replying to para 5 of the affidavit filed in support of the Writ Petition that at the time of verification made by the District Panchayat Officer, Kandukur on 16-7-2004, the Sarpanch Pentrala Gram Panchayat has not produced vouchers ft drawl of funds of the Gram Panchayat to a tune of Rs.71,695/-. It is further stated that the Sarpanch purchased electrical goods ft year 2002-2003, 2003-2004 and 2004-2005 to a tune of Rs.10,895/-; Rs.10,000/-; and Rs.4,200/- respectively. It is also further stated that the petitioner has also purchased P.H.articles for Rs.10,000/- for the year 2002-2003, Rs.19,600/- ft year 2003-2004 and Rs.4,900/- for the year 2004-2005. It is stated that the petitioner has not called for the tenders as

required under G.O.Ms.No.964, dt.9-9-1965 and he violated the Government Orders. It is also stated that as per Rule 8 of the Rules issued in G.O.Ms.No.4, P.R. and R.D., dt.7-1-2002 the Secretary of the Gram Panchayat shall maintain the required registers of the Gram Panchayat. It is further stated that the petitioner has not handed over the material purchased to the Secretary for maintenance of the Stock Register and the petitioner also not produced the Stock Register at the time of enquiry and in the absence of the Vouchers and the Stock Register, the expenditure incurred by the Sarpanch is doubtful. It is also stated that as per G.O.Ms.No.96, P.R., dt.11-6-1996 the payment should be made by way of cheque to the parties if the amount exceeds Rs.500/-, but the petitioner had paid the amount by way of cash to the parties. It is also stated that the petitioner had debited the expenditure towards NMRs is as follows:-

1. 2002-2003	Rs.6,250/-
2. 2003-2004	Rs.8,700/-
3. 2004-2005	Rs.1,950/-

It is further stated that at the time of enquiry the N.M.Rs., were not produced for verification before the E.O. (P.R. and R.D.) Lingasamudram and the Engineering Department also has not certified the NMRs. It is also stated that the petitioner had taken oath on 12-2-2002 and

he had drawn honorarium for the month of January 2002 and it is highly irregular and it is a clear case of misappropriation and the petitioner is liable for punishment and the action taken against the petitioner is not at anybody influence, it is purely on the basis of the irregularities committed by the petitioner. It is further stated that as per material available in office and the records available the District Collector (PW), Ongole had issued a show cause notice in Roc.No.1307/2004 (Pts) A1, dt.10-12-2004 to the petitioner under Section 249(6) of the A.P. Panchayat Raj Act 1994 is valid as per Law and the provisions of the A.P. Panchayat Raj Act 1994. It is also further stated that in para 6 of the counter affidavit in reply to para 6 of the affidavit filed in support of the Writ Petition that sub-Rule (2) of Rule 42 of the Rules issued in G.O.Ms.No.30 P.R., dt.20-1-1995 there is a provision for appeal against the orders issued by the District Panchayat Officer to the District Collector but the petitioner had not availed this opportunity and he straight away approached this Court and filed the present Writ Petition and as such he is not entitled for any relief in this regard. Further it was stated in para 7 of the counter affidavit that as per Section 2 (12) of the A.P. Panchayat Raj Act 1994, the Sarpanch is the Executive Authority in respect of non-

notified Gram Panchayat and the show cause notice issued under Rule 42(1) of the rules issued in G.O.Ms.No.30, P.R., dt.20-1-1995 by the District Panchayat Officer, Ongole is valid as per Law and the provisions of the A.P. Panchayat Raj Act 1994. It is further stated that the petitioner had committed serious financial irregularities in the administration of the Gram Panchayat and he is liable for punishment under Section 249 of the A.P. Panchayat Raj Act 1994 and as such he is not entitled for any relief and the Writ Petition be dismissed with costs.

6. R.4 filed counter affidavit denying the allegations and taking a stand that the Sarpanch, Gram Panchayat, Pentrala had submitted the Account Opening Form on 5-6-2006 to this respondent for opening a Current Account in the name of Sarpanch, Gram Panchayat, Pentrala in the capacity of Sarpanch, on behalf of Government of India, Department of Revenue and the said applicant was introduced by the Mandal Parishad Development Officer, Linga Samudram and accordingly the Current Account bearing No.75 was opened in this respondent Bank. It is also stated that under the Account Opening Form the petitioner agreed that “This letter shall be in full force and effect notwithstanding the transfer or on account of the Officer signing hereunder ceasing to function and the

incumbent/s functioning in his/her place shall be entitled to continue to operate/close the account on production of proper authority duly signed by the authorized officer of the Government."

7. While dealing with a similar question in ***D. RAMA MURTHY vs. DISTRICT PANCHAYAT OFFICER, CHITTOOR (2006 (1) ALT 723 = 2006 (1) ALD 335)*** the learned Judge of this Court at paras 8, 9, 10, 15 and 16 observed as hereunder:-

> *"The term "executive Authority" was defined under Section 2 (12) of the Act, originally, as under: "executive Authority" means:- (i) in the case of a Gram Panchayat or a group of Gram Panchayats having an Executive Officer, the Executive Officer, and if there is no Executive Officer in charge, the Sarpanch of the Gram Panchayat; (ii) in the case of any other Gram Panchayat, the Sarpanch thereof;" in the year 2002, this definition was amended, through Act 22 of 2002 to be as under: "2(12 "executive Authority" means the Panchayat Secretary appointed to each Gram Panchayat." Under the unamended definition, the Sarpanch was liable to be treated, as executive Authority, depending on the circumstances provided therein. After it is amended, there does not exist any scope for such a situation. Executive Authority invariably means the Panchayat Secretary, and no other. The word "Sarpanch" is defined under Section 2 (37) of the Act, as the one who is elected under*

Section 14 of the Act. Hardly there exists any possibility for taking the Executive Officer, meaning thereby the Panchayat Secretary, for the Sarpanch, or vice versa. Nor there exist any circumstances for interchange of the powers and obligations of those two.

It is true that by amending Rule 40 of the Rules, through G.O.Ms.No.137, dated 9-2-96, the Government conferred powers of signing cheques and orders, in relation to Gram Panchayat funds, on the Sarpanch. However, Rule 41, which deals with the control of power of Executive Authority under Rule 40, was not correspondingly amended. Rules 40 and 41, as they stand now, read as under: "40. All orders or cheques against the Gram Panchayat fund shall be signed by the Sarpanch of the Gram Panchayat. 41. The drawing of money under Rule 40 by the executive authority shall be subject to the control of, and the conditions laid down by the District Panchayat Officer concerned. "there is a clear anomaly in these two rules. It is the Government that has to squarely blame itself for such a situation. At any rate, the fact that a Sarpanch was conferred with the power to sign cheques and orders under Rule 40, cannot make him, the Executive Authority, defendants hors the definition of the respective terms under the Act. Even assuming that the amendment of Rule 40 has the effect of bringing about such a situation, the rule cannot override the Act, and to the extent of conflict, the relevant rule has to give way, to the Act.

Where the provisions of a legislation are clear, they have to be enforced in their strict sense. A subordinate legislation can never be permitted to alter the meaning and scope of the specific term, defined under the parent legislation. Every step taken by the Legislature is presumed to be meaningful, and neither the executive, nor the Courts can substitute their understanding of the term, for the one, employed and defined by the legislature. If the A.P.State legislature has altered the definition of executive Authority, which hitherto, has taken in its fold, the Sarpanch also, exercise of power by the District Panchayat Officer has to accord with it, and under no circumstances, the legislative intention can be subverted. The principles are so firmly settled that citation of precedents in support thereof is almost superfluous.

From the above, it cannot be culled out that there exists authoritative pronouncement by this Court, to the effect that the Sarpanch of a Gram Panchayat answers the description of "executive authority", defined under Section 2(12) of the Act. On the other hand, the Sarpanch holds an elected office, whereas the Panchayat Secretary, who answers the description of "executive Authority", is an appointee by the competent authority. There is not even a semblance of parity in the manner in which they are inducted into the respective offices. The overlapping or similarity that existed under the definition of the term "executive Authority", as it stood before 2002, was completely wiped out, as a consequence of

the amendment, through Act 22 of 2002.

Therefore, viewed from any angle, the Sarpanch of a Gram Panchayat cannot be treated, as an Executive Authority, and the power under Rule 42, which may be invoked against an Executive Authority alone, can by no stretch of imagination be exercised, in relation to the acts and omission, on the part of a Sarpanch. Since the impugned order is found to be without jurisdiction, the petitioner cannot be required to undergo ordeal of an appeal."

8. It is stated that in the light of the said Judgment, for further clarification G.O.Ms.No.444 (P.R.), dt.29-12-2005 had been issued and the said G.O. reads as hereunder:-

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

A.P. Panchayat Raj Act, 1994 – Rules relating to certain taxes and the lodging of moneys received by Gram Panchayat and payment of moneys from the Gram Panchayat Fund – Amendment – Notification – Issued.

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PANCHAYAT RAJ & RURAL DEVELOPMENT (PTS.III) DEPARTMENT

G.O.Ms.No.444
Dt. 29-12-2005.

Read the following:-

1. *G.O.Ms.No. 30, PR & RD & RF (Pts.III) Department, dt.20-1-1995.*
2. *Order from the Hon'ble High Court in W.P.no.22696/2005, dt.7-11-2005.*

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The following Notification shall be published in the extraordinary issue of the Andhra Pradesh Gazette dated 31-12-2005.

NOTIFICATION

In exercise of the powers conferred by sub-Section (1) and clause (XXVII) of sub-Section (2) of Section 268 read with sub-Section (4) of Section 74 of the A.P. Panchayat Raj Act, 1994 (Act No.13 of 1994), the Governor of AP hereby makes the following amendments to the Rules relating to certain taxes and the lodging of moneys received by Gram Panchayat and payment of moneys from the Gram Panchayat Fund issued in G.O.Ms.No. 30, PR & RD & Relief (Pts.III) Dept., dated 20-1-1995, as amended subsequently from time to time.

In the said rules:-

(1) for rule 41, the following rule shall be substituted, namely:-

"41. The drawing of moneys under rule 40 by the Sarpanch shall be subject to the control of, and the conditions laid down by the District Panchayat Officer concerned"

(2) for rule 42, the following shall be substituted, namely:-

42 (1) The District Panchayat Officer concerned may, for sufficient reasons to be recorded in writing, prohibit by an order any Sarpanch from drawing the moneys of the Gram Panchayat for such period as may be specified in such order,

Provided that so such order shall be passed unless opportunity of making representation has been given to the Sarpanch concerned.

Provided further that the District

Panchayat Officer may issue an interim direction to the Sarpanch not to draw the moneys of the Gram Panchayat pending the exercise of his powers under this sub-rule.

(2) any Sarpanch aggrieved by an order passed by the District Panchayat Officer concerned under sub-rule (1), may prefer an appeal in writing to the District Collector concerned within seven days of the receipt of the order and the decision of the District Collector thereon shall be final.

(3) Every order passed under sub-rule (1) shall specify the name of the person or the authority who shall draw the moneys of the Gram Panchayat during the period during which the Sarpanch is prohibited from drawing such moneys.

(4) A copy of every order passed under sub-rule (1) or sub-rule (2) shall be communicated to all banks and treasuries in which the moneys of the Gram Panchayat are lodged.

(5) On and from the date of receipt of such order by any bank or treasury, no payment shall, for the period specified in such order, be made to the Sarpanch who is prohibited by such order from drawing the moneys of the Gram Panchayat."

(BY ORDER AND IN The NAME OF THE GOVERNOR OF ANDHRA PRADESH)

M. SAMUEL.
PRINCIPAL SECRETARY TO GOVERNMENT

9. As far as the impugned action is concerned,

inasmuch as the same was taken in the light of G.O.Ms.No.30 P.R. & R.D. & Relief (Pts.III) Department, dated 20-1-1995, it is needless to say that the same cannot be sustained and accordingly, the writ petitioner is bound to succeed and the Writ Petition is allowed. But, however, it is made clear that this would not come in the way of respondents 1 and 2 in taking appropriate steps in the light of the subsequent change, if any. Except making the above clarification, nothing else can be done in the light of the view expressed by this Court already in ***D.Rama Murthy's case (referred to supra).***. Accordingly, the Writ Petition is allowed to the extent indicated above. No order as to costs.

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Justice P.S.Narayana

8th November, 2006
smr